

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:)	
David E. Jones)	
Serial No.: 10/720,880)	Group Art Unit: 3644
Filed: November 24, 2003)	Examiner: Elizabeth Anne Shaw
FOR: ANGLED RIDING STIRRUP)	
)	Confirmation No.: 5131

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

This paper is submitted in response to the Final Office Action mailed April 20, 2006, in the above-identified application, and is filed within three months after the expiration of the three-month shortened statutory period for response set in the Final Office Action. A petition for a three-month extension of time to respond to the Final Office Action is submitted herewith together with the appropriate three-month extension fee.

Appellant requests review of the final rejection in the above-identified application. No amendments are being filed with this request and this request is being filed with a Notice of Appeal. The review is requested for the reasons stated below.

1 REJECTIONS STATED IN THE FINAL OFFICE ACTION

2 Claims 1-29 stand rejected in this case. Claims 1-14 are rejected under the doctrine of
3 obviousness-type double patenting in view of claims 1-16 of U.S. Patent No. 6,651,409. Claims
4 15-29 are rejected under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 3,899,5
5 to Towers ("Towers" or the "Towers patent").

6
7 CLAIMS 1-14 AND 20 HAVE PREVIOUSLY BEEN CANCELED

8 Claims 1-14 were canceled in the response filed October 21, 2004, in this case. Claim 20
9 was canceled in the response filed January 20, 2006. Claims 15-19 and 21-29 are currently
10 pending in this case. Considering that claims 1-14 and 20 have been canceled, the obviousness-
11 type double patenting rejection of claims 1-14 is in error, as is the Section 103 rejection of claim
12 20.

13
14 CLAIMS 15-19 AND 21-29 ARE NOT OBVIOUS IN VIEW OF THE TOWERS PATENT

15 Independent claim 15 is directed to a riding stirrup suspended from a western equestrian
16 saddle, and requires the following structure for the stirrup:

- 17 (a) a hanger rod;
18 (b) a stirrup loop connected to the hanger rod at both ends of the hanger rod and
19 defining a stirrup opening;
20 (c) an elongated base support tread at a bottom portion of the stirrup loop and spaced
21 apart from the hanger rod, the elongated base support tread having an upper
22 surface with a longitudinal center axis extending at a slant with respect to a stirrup
23 centerline, the stirrup centerline extending substantially perpendicular to the
24 hanger rod, substantially through a mid point of the hanger rod, and the upper
25 surface of the elongated base support tread being approximately centered on the
26 stirrup centerline; and

(d) wherein the upper surface of the elongated base support tread is slanted with respect to the hanger rod such that the shortest distance between an inner tread end of the elongated base support tread and the longitudinal axis of the hanger rod is less than the shortest distance between an outer tread end of the elongated base support tread and the longitudinal axis of the hanger rod, and such that the upper surface of the elongated base support member slopes downwardly away from a position of a horse under the saddle. (Emphasis Added)

In stating the Section 103 rejection of claim 15 in view of the Towers patent, the Final Office

Action makes the following statement.

With respect to claim 15, to position the stirrups of Towers such that the upper surface of the base support member slopes downwardly away from the position of the horse would have been obvious to one skilled in the art in order to alter the angle for the comfort of the individual user; it is therefore considered that the stirrups can be interchangeably placed on either side of the saddle such that the longer side member is on the side away from the horse. (Final Office Action, last 4 lines of page 3 and top 2 lines of page 4).

However, the Towers patent specifically states that the foot rests C shown in that patent have "a slight inclination downward as they extend toward the horse, for the purpose of better conforming with the bearing-weight of the feet" (Towers, bottom of col. 1 and top of col. 2).

The Towers patent further states that the inward inclination of the foot rests C shown in that patent not only render them more comfortable to skillful riders, but also forces unpracticed riders to turn the forward parts of their feet inward toward the horse which causes upper portions of the rider's legs to rest or be braced against the sides of the saddle to help take some of the rider's weight. (Towers, middle of col. 2) There is absolutely no suggestion in the Towers patent to reverse the slope of the foot rests C as proposed in the Final Office Action.

In order to make a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of

1 ordinary skill in the art, to modify a reference or to combine reference teachings. Furthermore,
2 the prior art reference or combination of references must teach or suggest all the claim
3 limitations. M.P.E.P. §2143. In this case, the single reference cited in the Section 103 rejection
4 of claim 15 clearly does not disclose the limitation set out at element (d) in claim 15. In order to
5 make the Section 103 rejection, the Final Office Action relies on a modification to the stirrup
6 shown in the Towers patent to reverse the slope of the foot rests C shown in that patent.
7 However, the Final Office Action cites no teaching or suggestion in the prior art to make this
8 modification to the Towers stirrup. Rather, the Final Office Action merely states that it would
9 have been obvious to "alter the angle [of the foot rests C] for the comfort of the individual user."
10 (Final Office Action, final line of page 3). Not only does the Final Office Action cite no teaching
11 or suggestion to "alter" the foot rest angle, but also, merely altering the foot rest angle in the
12 Towers stirrup does not meet the limitation of Appellant's claim 1, element (d). The alteration
13 would have to completely reverse the angle of the foot rest C shown in Towers.

14 Because the Final Office Action fails to cite any teaching or suggestion in the prior art to
15 modify the angle of the foot rests C of the Towers stirrup to produce the base support tread slope
16 required in element (d) of claim 15, the Final Office Action clearly fails to make out a *prima*
17 *facie* case of obviousness as to claim 15. The Appellant therefore respectfully requests that the
18 Final Office Action be withdrawn. The Appellant further submits that claim 15 is not obvious in
19 view of the Towers patent and the other prior art of record in the case and should be allowed
20 together with its dependent claims, claims 16-19 and 21.

21 The Appellant further notes that the other independent claims in the case, claims 22, 25,
22 and 28 each include a limitation as to the slope of the base support tread similar to that set out in

1 claim 15. Thus, the above arguments apply with equal force to claims 22, 25, and 28, and these
2 claims should also be in condition for allowance together with their respective dependent claims,
3 claims 23 and 24, claims 26 and 27, and claim 29.

4 The Appellant notes that the Final Office Action includes further errors with respect to
5 the Section 103 rejections in view of Towers. The Appellant believes that these further errors go
6 more to the interpretation of the claims and the prior art, and are thus not presented here for pre-
7 appeal brief review.

8
9 CONCLUSION

10 For all of the above reasons, the Appellant respectfully requests reconsideration and
11 allowance of claims 15-19 and 21-29.

12 Respectfully submitted,

13 The Culbertson Group, P.C.

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17 Dated: 20 Oct. 2006

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